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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/728,442	11/30/2000	Christian Lemler	50325-0505	2497
29989	7590	07/17/2006	EXAMINER	
HICKMAN PALERMO TRUONG & BECKER, LLP			BAYARD, DJENANE M	
2055 GATEWAY PLACE			ART UNIT	
SUITE 550			PAPER NUMBER	
SAN JOSE, CA 95110			2141	

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/728,442

Applicant(s)

LEMLER ET AL.

Examiner

Djenane M. Bayard

Art Unit

2141

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 June 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11, 22, 23, 25-33, 36, 37, 39, 40, 42 and 43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 22-23, 25-33, 36-37, 39-40, 42-43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. This is in response to amendment filed on 6/15/06 in which claims 1-11, 22-33, 36-40, 42-43 are pending.

#### ***Response to Amendment***

2. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

#### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-11, 22-33, 36-40, 42-43 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 5-6, 10-11, 22, 25, 29, 33, 36, 39 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5974237 to Laurent et al (Describing your data: DTDs and XML schemas) and further in view of Official Notice.

a. As per claims 1, 6, and 10-11, Shurmer et al teaches a method for defining a service level agreement, wherein the service level agreement defines for a particular network a level of service that has been offered to a customer by a service provider, the method comprising the computer implemented steps of: creating a schema that provides a set of rules for defining both the contents of service level agreements and how to organize the contents of service level agreements (See col. 1, lines 44-67 and ); receiving first information defining the service level agreement, wherein said information defines one or more test for monitoring the level of service that has been offered to the customer (See col. 6, lines 57-67, col. 7, lines 1-9, col. 8, lines 3-14, col. 14, lines 39-48 and col. 16, lines 39-43) ; verifying that the information defining said particular service level agreement conforms to the set of rules in said schema (See col. 20, lines 52-56, col. 21, lines 18-25, 50-53 and col. 25, lines 57-67); receiving second information defining service level contract, wherein said second information defines apply times for performing the one or more test (See col. 16, lines 35-46) Furthermore, Shurmer teaches to collect a plurality of user input operational parameters into a monitoring session or class (See col. 2, lines 50-64, col. 17, lines 19-45). However, Shurmer did not specifically teach a schema.

Laurent teaches that XML schemas can carry information, describe what different elements should contain and how they should be used (what DTD and XML schemas do).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to carry operational parameters and their descriptions using XML schemas.

Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention to combine the teaching of Shurmer and Laurent because Laurent's teaching of using XML schemas helps Shurmer's method to collect and carry the operational parameters, their

Art Unit: 2141

descriptions of components and element in data structures in preparing the network monitoring (See Shurmer , col. 20, lines52-57).

Furthermore, Shurmer in view of Laurent did not specifically verifying that said information defining the first service level agreement and said second information defining the service level contract conform with the level of service that has been offered to the customer by the service provider. However, since Shurmer teaches to perform test to monitor service parameter and to identify particular elements of the network which are problematic to one or more customers of the network ( See col. 7, lines 37-52, col. 8, lines 15-20 and col. 7, lines 27-31), it is obvious to one with ordinary skill in the art to use the result of the test to determine whether the customer is actually receiving service according to what is agreed on the service level contract. Official notice is taken that it is obvious to verify that the service level agreement and service level contract conform with the level of service that has been offered to the customer by the service provider to ensure quality of service to the customers.

b. As per claims 5, 29, 33, Shurmer in view of Laurent teaches the claimed invention as described above. Furthermore, Shurmer teaches the steps of verifying that the network includes one or more devices that may be configured to perform the one or more tests (See col. 6).

c. As per claims 22, 36, 39 and 42, Shurmer in view of Laurent teaches the claimed invention as described above. Furthermore, Shurmer teaches wherein the one or more tests are one or more metric tests, and the step of receiving information defining the service level agreement comprises: receiving through a standardized open interface metric parameter

Art Unit: 2141

information that defines one or more metric tests that are to be used to verify that the customer is receiving the level of service that has been guaranteed by the service provider; and verifying that based on the metric parameter information, the one or more metric tests will provide an appropriate set of tests for measuring the level of service that is being provided to the customer by the service provider (See col. 1, lines 47-60, col. 6, lines 57-67, col. 7, lines 1-9, col. 8, lines 3-14, col. 14, lines 39-48, col. 16, lines 39-43, col. 20, lines 52-56, col. 21, lines 18-25, col. 25, lines 57-67 and col. 26, lines 1-52).

d. As per claim 25, Shurmer in view of Laurent teaches the claimed invention as described above. Furthermore, Shurmer teaches verifying that the particular network includes one or more devices that may be configured to perform the one or more tests (See col. 6).

6. Claims 2, 7, 26 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5974237 to Laurent et al (Describing your data: DTDs and XML schemas). claims 1 and 6 above, and further in view of U.S. Patent No. 6,704883 to Zhang et al.

a. As per claims 2, 7, 26 and 30, Shurmer in view of Laurent teaches the claimed invention as described above. However, Shurmer in view of Laurent teaches to teach wherein if said information defining said particular service level agreement conforms to the set of rules in said schema, then distributing the one or more tests to one or more agents that are configured to communicate with devices that are associated with the network; receiving result information based on the devices performing the one or more tests; and creating and storing reporting

information that indicates whether the customer is receiving the level of service that has been offered.

Zhang et al teaches an event enabled distributed testing system. Furthermore, Zhang et al teaches wherein the controller publishes a test script for event engine to broadcast to the test engine (See col. 4, lines 17-25); after agents complete their individual test, each agent sends test results back to controller for analysis (see col. 4, lines 42-46)); and creating and storing reporting information that indicates whether the customer is receiving the level of service that has been offered (See col. 4, lines 47-58).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Zhang in the claimed invention of Shurmer in view of Laurent in order to provide simultaneous test execution by many agents at a particular network location when the agents are directed to send data to that particular location (See col. 2, lines 6-14).

7. Claims 4, 9, 28 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5974237 to Laurent et al (Describing your data: DTDs and XML schemas) applied to claims 1 and 6 above, and further in view of U.S. Patent No. U.S. Patent No. 6,397359 to Chandra et al.

a. As per claims 4, 9, 28 and 32, Shurmer et al in view of Laurent teaches the claimed invention as described above. However, Shurmer et al in view of Laurent fails to teach generating, at a server, interface data for defining the service level agreement; and

communicating the interface data to a client that is remote from said server, wherein the interface data allows users to define tests for monitoring the level of service that is being provided by the service provider.

Chandra et al generating, at a server, interface data for defining the service level agreement; and communicating the interface data to a client that is remote from said server, wherein the interface data allows users to define tests for monitoring the level of service that is being provided by the service provider (See col. 7, lines 49 and col. 8, lines 48-57).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate the teaching of Chandra et al in the claimed invention of Shurmer et al in view of Laurent in order to provide the automated evaluation of the acceptability of monitored performance of the network (See col. 2, lines 60-64).

8. Claims 3, 8, 27, 31 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5974237 to Laurent et al (Describing your data: DTDs and XML schemas) as applied to claims 1 and 6 above, and further in view of U.S. Patent Application Publication No. 202/0049815 to Dattatri et al.

a. As per claims 3, 8, 27, 31 and 34, Shurmer et al in view of Laurent teaches the claimed invention as described above. However, Shurmer et al in view of Laurent fails to teach wherein the step of creating a schema includes the step of generating a schema, wherein the schema provides a template for defining service level agreements (See col.2, lines 58-60). However,



Elleson et al fails to teach wherein the schema is based on Extensible Markup Language (XML).

Dattatri et al teach wherein the schema is based on Extensible Markup Language (XML) (See page 2, paragraph [0011-0012].

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the schema is based on Extensible Markup Language (XML) as taught by Shurmer et al in view of Laurent in order to provide tracking and monitoring (See page 1, paragraph [0008]).

9. Claims 23, 37, 40, and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5974237 to Laurent et al (Describing your data: DTDs and XML schemas) as applied to claims 1 and 6 above, and further in view of U.S. Patent U.S. Patent No. 6, 701345 to Carley et al

b. As per claims 23, 37, 40 and 43, Shurmer et al in view of Laurent teaches the claimed invention as described above. However, Shurmer et al in view of Laurent fails to teach wherein the step of verifying the one or more metric tests includes the step of verifying that the one or more metric tests conform to a standard of testing that has been approved by the service provider.

Carley et al teaches wherein the step of verifying the one or more metric tests includes the step of verifying that the one or more metric tests conform to a standard of testing that has been approved by the service provider (See col. 37, lines 7-15).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to incorporate wherein the step of verifying the one or more metric tests includes the step of verifying that the one or more metric tests conform to a standard of testing that has been approved by the service provider as taught by Carley et al in the claimed invention of Shurmer et al in view of Laurent al in order to ensure integrity, quality and consistency (See col. 18, lines 15-17).

### *Conclusion*

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Djenane M. Bayard whose telephone number is (571) 272-3878. The examiner can normally be reached on Monday- Friday 5:30 AM- 3:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on (571) 272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 09/728,442  
Art Unit: 2141

Page 10

Djenane Bayard

Patent Examiner



RUPAL DHARIA  
SUPERVISORY PATENT EXAMINER